



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, RR, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for an order directing the landlord to make emergency repairs for health and safety reasons, for an order directing the landlord to make regular repairs to the unit, site or property, for a monetary claim for \$10,000.00 and to recover the cost of the filing fee.

The tenant and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. The hearing process was explained to both parties and an opportunity to ask questions was provided to the parties. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The tenant confirmed that she did not serve the mold-related photos on the landlord and as a result, those photos were excluded from the hearing as the tenant failed to serve the landlord in accordance with the Rules. The remainder of the tenant's documentary evidence was confirmed by the landlord as having been received and reviewed prior to the hearing. The tenant also confirmed that she was served with the landlord's documentary evidence and that she had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application for emergency repairs for health or safety reasons. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request for emergency repairs for health or safety reasons and the tenant’s application to recover the cost of the filing fee at this proceeding. The balance of the tenant’s application is dismissed, with leave to re-apply.

Issues to be Decided

- Should the landlord be ordered to make emergency repairs for health or safety reasons under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 15, 2016 and reverted to a month to month tenancy after August 31, 2017. Monthly rent in the amount of \$1,250.00 is due on the first day of each month. A security deposit of \$625.00 was paid by the tenant at the start of the tenancy.

The tenant indicates in her application that the emergency repairs requested for health and safety reasons are as follows:

1. Leaks in the rental unit and mould
2. Crack in the foundation

At the outset of the hearing, the tenant confirmed that there has not been a leak in the rental unit since December of 2017 so as a result, the leak issue was dismissed due to insufficient evidence.

Regarding the mould issue, the tenant was advised that I would not be addressing the mould without documentary evidence and as a result the parties reached a mutual agreement for the landlord to inspect the rental unit for the presence of mould which will be discussed further below.

Regarding the alleged cracks in the foundation, the tenant presented a photograph which the parties confirmed did not show a crack in the foundation and was a normal photograph of concrete that had been painted. The parties agreed during the hearing that there were no cracks in the foundation as of the time of the hearing and as a result, that item was dismissed due to insufficient evidence.

Analysis

Based on the documentary evidence presented, the testimony from the parties, and on the balance of probabilities, I find the following.

Section 33 of the Act covers emergency repairs and states:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

[Reproduced as written]

The tenant has the onus of proof when requesting repairs for health or safety reasons and I find that the leak and crack in foundation are unsupported by the evidence before me. This is also consistent with the testimony of the tenant which confirmed there has been no leaks in the rental unit since December 2017 and that there are no cracks in the foundation as of the time of this hearing. Therefore I dismiss the leak and crack issues due to insufficient evidence at this time.

The parties reviewed a colour photograph during the hearing where the landlord testified that approximately five years ago, the landlord arranged for the area next to the foundation to be excavated and the foundation was waterproofed with a black waterproofing material, and that

the drain tiles were replaced and that the downspouts were redirected to their own dedicated draining system.

Regarding the mould issue, the parties agreed on the following by way of a mutually settled agreement:

“The landlord will attend the rental unit on Wednesday, September 26, 2018 between 10:00 a.m. and noon to inspect the rental unit for the presence of mould.”

The parties confirmed their understanding that while they voluntarily formed this mutual agreement that the agreement is final and binding under the *Act*.

As the tenant was not successful in their application, I do not grant the recovery of the cost of the filing fee under the *Act*.

Conclusion

I dismiss the tenant's application due to insufficient evidence with the exception of the portion of this application that was severed under Rule 2.3 as described above which is dismissed with leave to reapply.

The inspection to determine the presence of mould was resolved by way of a mutually settled agreement as described above. I order the parties to comply with their mutually settled agreement pursuant to section 63 of the *Act*.

I do not grant the tenant recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 24, 2018

Residential Tenancy Branch